

ORAL ARGUMENT SCHEDULED FOR FEBRUARY 23, 2023

No. 23-3001 (UNDER SEAL)

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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IN THE MATTER OF THE SEARCH OF THE FORENSIC COPY OF THE  
CELL PHONE OF REPRESENTATIVE SCOTT PERRY

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA  
Case No. 22-sc-2144 (under seal)

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**APPELLANT'S MOTION TO ALLOW ACCESS TO THE SEALED  
RECORD BY DESIGNATED PERSONS IN THE OFFICE OF THE  
GENERAL COUNSEL FOR THE U.S. HOUSE OF REPRESENTATIVES**

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John P. Rowley III  
(D.C. Bar No. 392629)  
JPRowley Law PLLC  
1701 Pennsylvania Avenue, NW  
Suite 200  
Washington, D.C. 20006  
(202) 525-6674  
john.rowley@jproasleylaw.com

John S. Irving  
(D.C. Bar No. 460068)  
E&W LAW, LLC  
1455 Pennsylvania Avenue, N.W.,  
Suite 400  
Washington, D.C. 20004  
(301) 807-5670  
john.irving@earthandwatergroup.com

*Counsel for Appellant Representative Scott G. Perry*

Appellant Scott G. Perry (“Rep. Perry”), a Member of the House of Representatives, by and through his counsel, hereby requests that this Court allow access to the sealed record by designated persons in the Office of the General Counsel for the U.S. House of Representatives (“House Counsel”), stating in support thereof as follows:

1. On January 25, 2023, this Court entered an order dissolving the administrative stay and granting Rep. Perry’s motion for stay pending appeal insofar as the order on appeal denied his motion to withhold records. The Court further ordered, on its own motion, that this appeal be expedited with briefing by the parties according to the following schedule: Brief of Appellant and Appendix (February 6, 2023), Brief of Appellee (February 16, 2023), Reply Brief (February 21, 2023), and oral argument on February 23, 2023.

2. While not otherwise limiting the appeal, the Court directed the parties to address in their briefs issues involving the privileges and immunities of members of the U.S. House of Representatives, including (1) “Whether the Speech or Debate Clause of the Constitution protects informal legislative fact-finding by individual members of Congress in the absence of official authorization;” and (2) “Whether the Speech or Debate Clause’s non-disclosure privilege extends to communications between members of Congress and either private parties or members of the Executive Branch.”

3. Rep. Perry submits that, due to the important constitutional issues involved, it is important for the House Counsel to review the sealed record so that it may consider whether to seek authorization from this Court to submit an *amicus curiae* brief that offers information and expertise on the issues presented.

4. The House has frequently appeared as *amicus curiae* in cases that raise significant separation-of-powers questions relating to the constitutional privileges and protections applicable to the Legislative Branch. *See, e.g., United States v. Schock*, 891 F.3d 334 (7<sup>th</sup> Cir. 2018); *In re Fattah*, 802 F.3d 516 (3d Cir. 2015); *In re Grand Jury Subpoenas*, 571 F.3d 1200 (D.C. Cir. 2009); *In re Search of Rayburn House Bldg.*, 432 F. Supp. 2d 100, 105 (D.D.C. 2006), *rev'd sub nom., United States v. Rayburn House Office Bldg.*, 497 F.3d 654 (D.C. Cir. 2007); *Fields v. Office of Eddie Bernice Johnson*, 459 F.3d 1, 3 (D.C. Cir. 2006) (*en banc*); *Beverly Enters., Inc. v. Trump*, 182 F.3d 183, 186 (3d Cir. 1999); *United States v. McDade*, 28 F.3d 283, 286 (3d Cir. 1994); *United States v. Swindall*, 971 F.2d 1531, 1534 (11th Cir. 1992); *United States v. Biaggi*, 853 F.2d 89, 90 (2d Cir. 1988). *See also* Memorandum of Points and Authorities in Support of Motion to Dismiss at pp. 20-23, *Assoc. of American Physicians & Surgeons et al v. Congressman Adam Schiff*, No. 20-cv-00106 (D.D.C. June 26, 2020)(ECF No. 19-1).

5. Upon receiving this Court's order yesterday, counsel for Rep. Perry contacted opposing counsel to inquire whether Appellee would agree to House Counsel's access to the sealed record. In response to that inquiry, counsel for Appellee stated that it objected to the request.

WHEREFORE, Appellant Scott G. Perry, respectfully requests that this Court allow access to the sealed record by designated persons in the Office of the General Counsel for the U.S. House of Representatives.

Dated: January 26, 2023

Respectfully submitted,

**JProley Law PLLC**

/s/ John P. Rowley III

John P. Rowley III

D.C. Bar No. 392629

1701 Pennsylvania Avenue, N.W., Suite 200

Washington, D.C. 20006

(202) 525-6674

john.rowley@jproleylaw.com

**E&W LAW, LLC**

/s/ John S. Irving

John S. Irving

D.C. Bar No. 460068

1455 Pennsylvania Avenue, N.W., Suite 400

Washington, D.C. 20004

(301) 807-5670

john.irving@earthandwatergroup.com

### CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with the type-volume requirements of Federal Rule of Appellate Procedure 27(d)(2) because the motion contains 542 words; and complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the typestyle requirements of Federal Rule of Appellate Procedure 32(a)(6) because this motion has been prepared in a proportionally spaced typeface using Microsoft Office Word in 14-point Times New Roman font.

Dated: January 26, 2023

Respectfully submitted,

/s/ John P. Rowley III  
John P. Rowley III

### CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit via email on January 26, 2023, and further that service will be accomplished by email to the following counsel for Appellee:

John M. Pellettieri  
Assistant Special Counsel  
[jmp@usdoj.gov](mailto:jmp@usdoj.gov)  
(202) 714-3913

Respectfully submitted,

/s/ John P. Rowley III  
John P. Rowley III